

INFORMATION BULLETIN #54

SALES TAX

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SUBJECT: Catalogs, Advertising Literature and Newspaper Advertising Supplements

I. Imposition of Tax - General Rule

The purpose of this bulletin is to explain the taxation of printed materials that are not to be resold. I.C. 6-2.5-3-2 (a) states: A[n] excise tax, known as the use tax, is imposed on the storage, use, or consumption of intangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction. I.C. 6-2.5-2-1 provides that the sales tax is imposed on all retail transactions in Indiana. A retail transaction is defined at I.C. 6-2.5-4-1 as the acquisition of tangible personal property for the purpose of resale and the subsequent transfer of that property to another person for consideration.

II. Catalogs and Advertising Supplements

Although certain limitations are imposed upon the states' ability to tax transactions in interstate commerce by the Commerce Clause of the United States Constitution, the U.S. Supreme Court has affirmed the states' ability to tax transactions in interstate commerce under certain conditions.

The questions of what constitutes a use in Indiana and what is an Indiana retail transaction arise when taxpayers authorize printers to mail promotional materials to the ultimate recipient. To illustrate specific tax situations, the following examples are provided for guidance.

1. When an Indiana customer engages the services of an out-of-state printer to print promotional materials and these materials to a common carrier for shipment to residents both inside Indiana and outside Indiana, the materials shipped to Indiana residents are subject to use tax. The Indiana customer must pay the use tax directly to the Department of Revenue based on the purchase price of the catalogs. In D.H. Holmes v. McNamara, 108 S. Ct. 1619 (1988), the United States Supreme Court has

affirmed the states' ability to tax these transactions if the promotional materials were shipped free of charge to the recipient and mailed to residents indicated by the purchaser. These actions were considered ~~use~~ within the meaning of the states' tax code, and not violate the Commerce Clause of the Constitution. However, the tax may only be imposed on the purchaser if the purchaser has sufficient contact with the taxing state.

2. When an Indiana customer engages the services of an Indiana printer to print promotional materials and deliver these materials to a common carrier for shipment or the U.S. Postal Service for mailing to residents both inside and outside Indiana, the materials that are shipped or mailed to Indiana addresses are subject to Indiana use tax. The printer must collect the use tax from the customer unless an exemption certificate or direct pay permit is issued by the purchaser. The use tax applies only to those materials shipped or mailed to Indiana addresses and not to those materials shipped or mailed to addresses outside of Indiana because of the provisions of I.C. 6-2.1-3-3.5 and I.C. 6-2.5-5-24(a). The tax would be based on the purchase price of the materials.

3. When an out-of-state customer engages the services of an Indiana printer to print promotional materials and deliver these materials to a common carrier for shipment or the U.S. Postal Service to be mailed to residents both inside and outside Indiana, this transaction is not subject to the collection of Indiana sales tax as this transaction does not take place in Indiana under the provisions of 45 IAC 2.2-2-1. However, the printer must collect use tax for the materials shipped to Indiana residents.

4. When advertising literature that is not to be resold is delivered directly to the purchaser inside Indiana for distribution both inside and outside Indiana, these materials are taxable to the Indiana purchaser. All items are used within Indiana under the definition of ~~use~~ found in I.C. 6-2.5-3-2(a).

The above examples apply to advertising materials and catalogs that are not resold. If the materials are resold, then the printer need only to collect either sales or use tax, depending on the circumstances.

III. Newspaper Inserts

Advertising inserts which are printed either by a newspaper or private printer and are distributed as part of a newspaper are exempt from sales and use tax in Indiana per I.C. 6-2.5-5-17. An advertising insert is advertising material that is incorporated into the newspaper or delivered in conjunction with the newspaper.

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Commissioner